

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

30717

FILE: B-215235

DATE: March 19, 1985

MATTER OF: Technical Sergeant Mary L. Fabian, USAF

DIGEST: A military member who has custody of her two children claims basic allowance for quarters as a member with dependents on account of one of the children for whom she receives no support from her former spouse, who is also a military member. Her children are an undivided class of common dependents and reside in one house. Since her former spouse pays child support for one of the children in an amount sufficient to qualify for the quarters allowance at the with-dependents rate, he is entitled to the basic allowance for quarters at the with-dependents rate on account of the children. She is only entitled to basic allowance for quarters as a member without dependents.

This action is in response to a request for an advance decision concerning the basic allowance for quarters entitlement of a divorced military member whose former husband, also a military member, is under court order to pay child support to the claimant for one of their two children, both of whom are in her legal custody.^{1/} We conclude that the claimant is only entitled to a basic allowance for quarters as a member without dependents.^{2/}

Facts

This case concerns the claim of Technical Sergeant Mary L. Fabian for basic allowance for quarters as a

^{1/} The request for advance decision was submitted by K. D. Broce, Accounting and Finance Officer, Headquarters 9th Strategic Reconnaissance Wing, Beale Air Force Base, California. The request was approved by the Department of Defense Military Pay and Allowance Committee and assigned control number DO-AF-1439.

^{2/} Since the accompanying voucher may not be certified for payment, it is being retained in this Office.

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member with dependents. Sergeant Fabian was formerly married to an Air Force member, and two children were born to their marriage. The two members were divorced in August 1981. The Superior Court of California, County of Yuba, in granting their divorce let stand the immediate custody arrangements set forth in their "marital settlement agreement," according to which Sergeant Fabian would have care, custody and control of one of their children, and her husband would have care, custody, and control of the other child, subject to each parent's visitation rights with the child in the other's custody. Neither parent was obligated to pay child support to the other since they each had custody of one of the children. However, their agreement also provided that if the child not granted to Sergeant Fabian's custody at that time was subsequently placed in her custody, the children's father was to pay child support in the amount of \$125 monthly for each child, a total amount of \$250 per month for their two children.

In February 1983, following Sergeant Fabian's discovery that her former husband had sent their child, who was in his custody, to reside in another state with a relative and that he was not supporting the child, court action was commenced by her attorney seeking a modification in the custody arrangements of that child. In May 1983, that child was placed in Sergeant Fabian's sole custody; she also retained custody of their other child. The court at that time ordered Sergeant Fabian's ex-husband to pay \$125 per month for child support on behalf of the child who previously was in his custody. However, the court refused to grant any change in the support arrangements for the child who was already in her custody, allegedly because the custody arrangements with respect to that child were not changed. Thus, she now has legal custody of both children but receives support payments from her ex-husband for only one child.

Prior to the modification of the custody arrangements that were ordered between February and May 1983, Sergeant Fabian was paid basic allowance for quarters as a member with dependents since she resided in private quarters and had the one child in her custody as her dependent and received no support payments from her ex-husband on behalf of that child. 37 U.S.C. § 403, as implemented by Department of Defense Pay and Allowances

Entitlements Manual, paragraph 30236a(4); Senior Airman Donna L. McCoy, USAF, and Staff Sergeant Marty L. Cooper, USAF, 62 Comp. Gen. 315 (1983). After the child who was previously in her ex-husband's custody was placed in her custody and her ex-husband ordered by the court to pay support in the amount of \$125 per month for that one child, payment to Sergeant Fabian of basic allowance for quarters as a member with dependents was discontinued. See Pay and Allowances Entitlements Manual, paragraph 30236a(5); Joanne M. Haag, USAF, 62 Comp. Gen. 350 (1983). She now receives the quarters allowance as a member without dependents, even though under order of the court she is still obligated to provide support for the child who has been in her sole custody since 1981. Pay and Allowances Entitlements Manual, paragraph 30236a(2); Joanne M. Haag, USAF, 62 Comp. Gen. 350, supra. Apparently, her ex-husband is receiving the allowance at the with-dependents rate based on his child support obligation.

The accounting and finance officer is aware of our decisions holding that only one member may receive the quarters allowance at the with-dependents rate for one class of common dependents. However, since in this case the dependents previously were divided by court order, but are now rejoined, the accounting and finance officer asks, in effect, whether Sergeant Fabian also may be paid the quarters allowance as a member with dependents on account of the child who was earlier placed in her custody and for whom she provides most, if not all, of the support, since her former husband is under court order to pay child support only for the child who was previously in his sole custody.

Analysis

A member of a uniformed service who is entitled to basic pay is also entitled to an increased basic allowance for quarters on account of his dependents if adequate Government quarters are not provided for them. 37 U.S.C. § 403 (1976). The purpose of the increased allowance is to reimburse the member for a part of the expense of providing private quarters for his or her dependents. 60 Comp. Gen. 399 (1981).

In Joanne M. Haag, USAF, 62 Comp. Gen. 350, supra, a case similar to the present case, we considered the basic allowance for quarters entitlements of a military member who had previously been married to a military member. Under their divorce decree, Ms. Haag was granted custody of their two children, and Mr. Haag was ordered to pay child support on behalf of only one of their two children. We concluded that the member who pays child support to the other member, in an amount sufficient to qualify under the applicable regulations, is entitled to the with-dependents basic allowance for quarters. Pay and Allowances Entitlements Manual, paragraph 30236a(1). The member who has custody of the children and receives support payments for only one child is entitled to basic allowance for quarters as a member without dependents, since only one with-dependents quarters allowance may be paid on account of a class of "common dependents"--that is, children born to the relationship of two members and, therefore, dependents of both members. Pay and Allowances Entitlements Manual, paragraph 30236a(2); 54 Comp. Gen. 665 (1975); Warrant Officer Leola F. Cruise, B-180328, October 21, 1974.

Although the "common dependents" rule originated in cases concerning the entitlements of members married to one another, in Joanne M. Haag, USAF, 62 Comp. Gen. 350, at 352, that rule was applied to divorced or separated members whose children are all in the legal custody of one of the parents. There we said that the situation regarding the common dependents rule would differ only:


"* * * where the class of common dependents is divided by court order or separation agreement (each member receiving custody of one child and no child support being awarded) or where joint custody required two separate households."
Joanne M. Haag, USAF, 62 Comp. Gen. at 352, supra.

It was further determined in that decision that, notwithstanding the fact that the children's father was ordered by the court to pay support on behalf of only one child, the class of children had not been separated,

for purposes of the "common dependents" rule since they resided in the same house and their father had parental rights to both of them.

In the case of Sergeant Fabian, prior to the modification of the original custody decree, her two children were considered members of a divided class under the Haag decision, for purposes of her entitlement to basic allowance for quarters, because they were divided by a separation agreement and subsequently by court order, and neither she nor her former husband was awarded child support. However, following the court's modification of its earlier custody order, her circumstances changed in law and in fact. Now, as in the Haag decision, both children are in Sergeant Fabian's legal custody and are apparently living together in the same house, and their father is under court order to pay child support on behalf of one child. Under the present circumstances, the fact that the class of dependents was formerly severed has no legal bearing upon her present entitlement to a quarters allowance.

We conclude, therefore, that Sergeant Fabian is not entitled to a basic allowance for quarters as a member with dependents in the current circumstances.

for 
Comptroller General
of the United States